

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

UNITED STATES, *et al.*,

*Plaintiffs,*

v.

GOOGLE LLC,

*Defendant.*

No. 1:23-cv-00108-LMB-JFA

**MEMORANDUM IN SUPPORT OF DAILY MAIL AND GANNETT CO. INC.'S  
MOTION FOR FUTHER ORDER REGARDING COORDINATION**

Associated Newspapers, Ltd., Mail Media, Inc. (collectively “Daily Mail”) and Gannett Co., Inc. are plaintiffs in the multidistrict litigation that is proceeding in parallel to this action. *See In re Google Digit. Advert. Antitrust Litig.*, No. 1:21-md-3010 (S.D.N.Y.) (the “MDL”); *Associated Newspapers Ltd. v. Google LLC*, No. 1:21-cv-3446 (S.D.N.Y.); *Gannett Co., Inc. v. Google LLC*, No. 1:23-cv-5177 (S.D.N.Y.). We file this motion on behalf of the MDL Plaintiffs collectively.

Expert discovery in this action has begun. The Coordination Order entered by this Court states that “Expert Discovery shall not be shared between the Coordinated Cases” – *i.e.*, this case and the MDL – “pending further order.” Coordination Order ¶ 7. On December 22, 2023, Plaintiffs in this case served Google with opening expert reports. MDL Plaintiffs respectfully request that the Court now enter such a further order to permit, but not compel, the parties here to share their own Expert Discovery with the MDL Plaintiffs and the State Plaintiffs led by Texas, whose action has been remanded to the Eastern District of Texas. *See Texas v. Google LLC*, No. 4:20-cv-00957 (E.D. Tex.).

Fact discovery is ongoing in both the MDL and *Texas*. See Pre-Trial Order No. 5, *In re Google Digit. Advert. Antitrust Litig.*, No. 1:21-md-3010 (S.D.N.Y. Nov. 21, 2022) (MDL fact discovery closes June 28, 2024), Dkt. No. 394; Scheduling Order at 2, *Texas v. Google LLC*, 4:20-cv-00957 (E.D. Tex. Jan. 2, 2024), Dkt. No. 194 (Texas fact discovery closes May 3, 2024). Permitting parties voluntarily to share their own expert materials will further coordination and promote the just and efficient conduct of the coordinated litigation. This case, the MDL, and *Texas* all share a common nucleus of facts. Because fact discovery was coordinated between this case and the MDL through the end of fact discovery in this case, MDL and *Texas* Plaintiffs already have the underlying documents and data for the expert reports in this case. Google has an advantage because it already shares expert material across all three cases with itself. While Google may use the plaintiffs' expert materials in this case to structure its discovery efforts in the MDL and in *Texas*, the MDL and *Texas* Plaintiffs currently are barred from seeing those materials. Entering an order permitting the parties here voluntarily to share their own expert materials will begin to correct this informational asymmetry.

The plaintiffs in this case advised MDL Plaintiffs that they do not oppose this motion. Google, however, has indicated that it opposes any near-term disclosure of expert materials to plaintiffs in the other cases. *E.g.*, Google's Responses and Objections to Plaintiffs' Second Set of Requests for Production at 11 (Oct. 30, 2023) (contending that production of expert discovery from this action is "premature and untimely").

During a recent hearing in *Texas*, Google stated that for it to share its expert materials now with the *Texas* plaintiffs would offer a "sneak peek" at Google's defenses. Hr'g Tr. 36:9-

11, *Texas v. Google LLC*, No. 4:20-cv-00957 (E.D. Tex. Dec. 14, 2023). Google's assertion is not implicated by the relief MDL Plaintiffs currently request.<sup>1</sup>

The MDL Plaintiffs respectfully request that this Court enter the Proposed Order permitting the parties in this case to share their own expert materials with parties in the MDL and *Texas*.

Dated: January 19, 2024

Respectfully submitted,

/s/ Charles B. Molster III

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Inc.*

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<sup>1</sup> Separately, in the MDL, MDL Plaintiffs have served discovery requests seeking Google's expert materials served in this case. Google's duty to comply with MDL discovery requests is not an issue for this Court.